



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0135]

RIN 1625-AA00

### Safety Zones; Fireworks Displays, Air Shows and Swim Events in Captain of the Port Long Island Sound Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

---

**SUMMARY:** The Coast Guard will add one safety zone for the Dolan Family Labor Day Fireworks event on Oyster Bay, NY, and remove six other annual recurring marine events in Coast Guard Sector Long Island Sound's Captain of the Port Zone. This rule is intended to expedite public information and to ensure the protection of the maritime public and event participants from the hazards associated with certain marine events. When enforced, the safety zones would restrict vessels from transiting the regulated area during annually recurring events.

**DATES:** This rule is effective without actual notice [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. For the purposes of enforcement, actual notice will be used from September 6, 2021 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0135 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Marine Science Technician 1<sup>st</sup> Class Chris Gibson, Waterways Management Division, Sector Long Island Sound; Tel: (203) 468-4565; Email: [chris.a.gibson@uscg.mil](mailto:chris.a.gibson@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Long Island Sound
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On June 14, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone (86 FR 31456). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to fireworks displays and other marine events no longer held. We received no comments during the comment period that ended July 14, 2021.

The Captain of the Port Long Island Sound (COTP) will amend Table 1 and 2 to 33 CFR 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone because adding a single recurring marine event and removing six marine events that no longer occur will considerably reduce administrative overhead and provide the public with notice through publication in the Federal Register of the upcoming recurring safety zone.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated

with this annual recurring event will be a safety concern for anyone within the area where the fireworks display will commence. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the safety zone must be established by September 6, 2021, for the Dolan Family Labor Day Fireworks display to mitigate the potential safety hazards.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published June 14, 2021. There are no changes in the regulatory text of this rule from the proposed rule.

This rule establishes a safety zone for the annual Dolan Family Labor Day Fireworks event by adding this event to Table 1 to 33 CFR 165.151. The event will occur on a day in September at a time to be determined each year. The regulated area will encompass waters of Long Island Sound off of Oyster Bay, NY. When enforced on the single day in September each year, this safety zone will restrict vessels from transiting the regulated area. When enforced on the one day in September each year, these safety zones will restrict vessels from transiting the regulated area. The specific description of this regulation appears at the end of this document.

Additionally, this rulemaking updates Table 1 and 2 to CFR 165.151 by removing six events that no longer take place. The Coast Guard will remove event 5.1 Jones Beach Air Show safety zone from Table 1 and remove five events from Table 2: (1) 1.1 Swim Across the Sound; (2) 1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim; (3) 1.4 Waves of Hope Swim; (4) 1.5 Stonewall Swim; and (5) 1.6 Swim Across America Greenwich safety zones.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This rule establishes a safety zone for the annual Dolan Family Labor Day Fireworks event. The regulated area will encompass a 500’ radius at approximate point of 40°53’43.90”N, 73°30’06.85”W navigable waters of Oyster Bay near Oyster Bay, NY. When enforced on the single day in September each year, this safety zone would restrict vessels from transiting the regulated area. Once enforced on the one day in September each year, these safety zones would restrict vessels from transiting the regulated area. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

Additionally, this rulemaking updates Table 1 and 2 to CFR 165.151 by removing six events that no longer take place.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism,

if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing an annual recurring safety zone for a firework display and removing six other various marine events in Coast Guard Sector Long Island Sound’s Captain of the Port Zone. It is

categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

2. Amend § 165.151 by:

- a. In Table 1 to §165.151 removing item “5.1 Jones Beach Air Show” and adding item “9.7 Dolan Family Labor Day Fireworks”; and
- b. In Table 2 to §165.151 removing items “1.1 Swim Across the Sound”, “1.3 Maggie Fischer Memorial Great South Bay Cross Bay Swim”, “1.4 Waves of Hope Swim”, “1.5 Stonewall Swim”, and “1.6 Swim Across America Greenwich”.

The addition reads as follows:

**§ 165.151 Safety Zones; Fireworks Displays, Air Shows and Swim Events in the Captain of the Port Long Island Sound Zone.**

\*\*\*\*\*

Table 1 to § 165.151

*****	
9	September
	*****
9.7 Dolan Family Labor Day Fireworks	<ul style="list-style-type: none"><li>• Date: A single day event in September.</li></ul>
	<ul style="list-style-type: none"><li>• Location: Waters of Oyster Bay Harbor in Long Island Sound off Oyster Bay, NY in approximate position 40°53'43.50" N, 073°30'06.85" W. The regulated area for this fireworks displays is that area of navigable waters within a 500 foot radius of the launch platform or launch site for each fireworks display.</li></ul>
*****	

\*\*\*\*\*

Dated: August 27, 2021

E. J. Van Camp,

Captain, U.S. Coast Guard,

Captain of the Port Long Island Sound.

[FR Doc. 2021-19148 Filed: 9/7/2021 8:45 am; Publication Date: 9/8/2021]